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DAN L. WILLIAMS & CO.

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA  
SAN FRANCISCO DIVISION

|   |   |  |
|---|---|--|
| In re:                                      | ) | Case No.: 3:07-cv-05944-JST  |
|   | ) |  |
|   | ) | MDL No.: 1917  |
|   | ) |  |
| CATHODE RAY TUBE (CRT) ANTITRUST LITIGATION | ) | <b>DAN L. WILLIAMS &amp; CO.'S AMENDED (PER COURT DIRECTIVE) OBJECTIONS TO SPECIAL MASTER'S REPORT AND RECOMMENDATIONS</b>   |
|   | ) |  |
| This Document Relates To:                   | ) |  |
|   | ) |  |
| All Indirect Purchaser Plaintiffs           | ) | <b>FILED PURSUANT TO THE COURT'S 3/7/16 ORDER (DKT. 4464) GRANTING DAN L. WILLIAMS &amp; CO.'S MOTION FOR LEAVE TO FILE LATE OBJECTION TO REPORT AND RECOMMENDATIONS</b> |

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1 Class member Dan L. Williams & Co. (Williams), objects to the report and  
 2 recommendation of the special master filed on January 28, 2016 (Dk 4351).

### 3 ARGUMENT

#### 4 I. Attorneys' Fees and Related Expenses

5 Class Counsel sought a fee of \$192.25 million dollars, *i.e.*, 33% of the total settlement  
 6 fund. The Special Master has recommended a slightly-reduced fee of \$173.25 million dollars.  
 7 This recommended fee still amounts to 30% of what the Special Master has repeatedly noted is  
 8 the second-largest indirect purchaser antitrust settlement in history. However, the excessive  
 9 amount of attorneys' fees that private counsel for the plaintiff class is seeking from the  
 10 settlement fund is not mitigated by the cosmetics of a 10% across-the-board reduction, as the  
 11 R&R proposes. Even according to the Special Master's calculation, this adjusted sum is still a  
 12 percentage of the fund award that results in a multiplier of approximately 2.14 on Class  
 13 Counsel's \$81,067,569.20 lodestar.  
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17 The Court should apply the "megafund" principle—applied by other federal circuit  
 18 courts—that in order for class members to benefit from economies of scale, fee awards to class  
 19 counsel should generally decline when class funds exceed \$100 million. 4 NEWBERG ON CLASS  
 20 ACTIONS § 14.6 (4th ed.) ("Some courts utilize a lower percentage when common funds are very  
 21 large, finding that a lower percentage sufficiently rewards class counsel in such 'mega-fund'  
 22 cases."); ANN. MANUAL COMPLEX LIT. §14.121 (2012 ed.) ("in 'mega-cases' in which large  
 23 settlements or awards serve as the basis for calculating a percentage, courts have often found  
 24 considerably lower percentages of recovery to be appropriate.") Application of the megafund  
 25 principle reduces the benchmark percentage that class attorneys may reasonably claim against  
 26 settlement funds in excess of \$100,000,000 to a percentage below the percentage that Class  
 27  
 28

1 Counsel seek for this proposed Class Settlement—a sum that is still 5% above the 25%  
2 benchmark the Ninth Circuit adopted for *non*-megafund cases. The special master’s conclusion  
3 that his recommendation is supported by *High-Tech*<sup>1</sup> is not plausible. There, the percentage of  
4 the fund was drastically lower (10.5%), so the lodestar multiplier aligned with a sensible  
5 aggregate fee for a total fund of \$415 million.  
6

7 The Special Master elected to use a percentage-of-the-fund method to determine  
8 appropriate fees for class counsel. He elected to cross-check this analysis against a lodestar with  
9 a multiplier. The Special Master relied almost entirely upon Class Counsel’s own declarations in  
10 determining that counsel’s time was reasonable and reliable. While the Special Master stated  
11 that he spot-checked these declarations by reviewing contemporaneous billing entries, his review  
12 was admittedly limited to only 8 of the 50 firms involved. Thus, for 42 of the class firms, the  
13 review went no further than reviewing the firm’s own declaration. Further, although recognizing  
14 that Lead Counsel appointed an Audit Committee to review Class Counsel’s time, the Special  
15 Master did not even review the committee’s work. Thus, to the extent the Court decides to  
16 buttress its fee award determination with the Special Master’s recommended lodestar of  
17 \$81,067,569.20 (and a multiplier of 2.14), Objector Williams conditionally moves to intervene  
18 and for leave to conduct limited discovery, including production of all time records in  
19 searchable, electronic format; sufficient time to review and analyze those records; and then  
20 sufficient time to depose appropriate counsel; and then to prepare any papers regarding the true  
21 reasonableness of the lodestar claimed. Without at least limited discovery, there is no  
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27 <sup>1</sup> *In re High-Tech Employees Antitrust Litig.*, 2015 WL 5158730 (N.D. Cal. No.-11-cv-2509,  
28 Sept. 2, 2015).

1 meaningful “cross-check,” as nothing is actually checked other than arithmetic applied to an  
 2 asserted lodestar.

3 While Class Counsel may—in asserting that the benefit to the class is the full sum  
 4 being paid by the defendants—argue that “[n]o cy pres distribution is contemplated,” it is hard to  
 5 imagine that all funds will be claimed, or that a pro-rata distribution of unclaimed funds will not  
 6 result in a windfall—the result being that what is supposedly not contemplated will unavoidably  
 7 occur. With regard to this issue, we respectfully acknowledge the Ninth Circuit’s precedent in  
 8 *Staton v. Boeing Co.*, 327 F.3d 938, 959–61 (9th Cir. 2003), that allows courts to credit cy pres  
 9 monies, but urge for en banc and Supreme Court preservation purposes that the contrary rule in  
 10 *Redman v. RadioShack*, 768 F.3d 622 (7th Cir. 2014) is the more appropriate. We acknowledge  
 11 the decision in *Williams v. MGM–Pathe Comm-c’ns Co.*, 129 F.3d 1026, 1027 (9th Cir.1997) that  
 12 permits fee awards based on the total sum available to class members, rather than the sums  
 13 actually claimed and received, but submit for en banc and Supreme Court preservation purposes  
 14 that the contrary rule in *Redman* is the more appropriate one.

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 18 II. The Report Would Release All Missouri Claims (Which Are Actionable Under Missouri Law)  
 19 Without Compensation:

20 The special master’s R&R does not solve the point of the objection that the releases  
 21 included in the Class Settlement are overly broad because the releases (as in the case of the  
 22 Philips Settlement quoted below) state that the settling defendants will be released of, among  
 23 other things, all claims:

24  
 25 arising out of or relating in any way to any act or omission of  
 26 the Philips Releasees (or any of them) concerning the  
 27 manufacture, supply, distribution, sale or pricing of CRT  
 28 Products up to the date of execution of this Agreement,  
 including but not limited to any conduct alleged, and causes of  
 action asserted or that could have been alleged or asserted, in

1 any class action complaints filed in the Action, including those  
2 arising under any federal or state antitrust, unfair competition,  
3 unfair practices, price discrimination, unitary pricing, or trade  
practice law.

4 Philips Settlement Agreement §13 [Dkt. 3862-1]. This language is broad enough to release  
5 claims of claimants in states that are not even defined to be part of the class—including  
6 claimants who reside in states like Missouri, or those who purchased products in Missouri, but  
7 may reside in states included within the class definition, like Williams, a resident of Kansas.  
8

9 Missouri law provides consumer remedies for price-fixing to its citizens and others who  
10 were indirect purchasers of products in Missouri and for which Missouri indirect purchaser  
11 claimants recovered in the parallel LCD litigation in the same court. *See In re TFT-LCD (Flat*  
12 *Panel) Antitrust Litigation*, Case No. 3:07-MD-1827 SI (N.D. Cal. 2014). Missouri's Supreme  
13 Court has authorized indirect purchasers to maintain actions under Missouri's Merchandising  
14 Practices Act. Mo. Rev. Stat. § 407.020 et seq. (Supp. 2010). *See also In re Lithium Ion Batteries*  
15 *Antitrust Litig.*, 2014 WL 4955377 (N.D. Cal. Oct. 2, 2014) at \* 19.  
16

17 The fact that these legitimate claims (for purchases made in Missouri) are given up  
18 without compensation does not comport with due process and is a formidable taking without just  
19 compensation. The payment of claims from the fund is not apportioned by states, so that there  
20 seems to have been no logical reason in the first place, and certainly none in retrospect, to insist  
21 on a subclass representative for claims from purchases in Missouri. The Settlement Class could  
22 simply include all individuals that made qualifying purchases in any state that would allow  
23 antitrust relief through state antitrust laws or their counterpart consumer protection statutes. The  
24 Court has the power to change the class definition. *Mazur v. eBay Inc.*, 257 F.R.D. 563, 568  
25 (N.D. Cal. 2009). Even if a subclass representative was necessary, the court can divide a class  
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1 into subclasses on its own volition. *Santillan v. Gonzales*, 388 F. Supp. 2d 1065, 1072 (N.D. Cal.  
2 2005).

3  
4 III. The Notice Campaign Is Inadequate:

5       The notice campaign does not meet the federal standard of “the best practicable notice”  
6 pursuant to Federal Rule of Civil Procedure 23. It is telling that although the deadline for  
7 disclosure has passed, we still have absolutely no information regarding the actual claims yield.  
8 Based upon the assorted problems with the notice campaign, Williams anticipates a claims rate  
9 so low as to require the appointment of an independent expert to analyze the results of the notice  
10 campaign. The Court should require that the number of claimants (including the number of CRTs  
11 per claimant) be disclosed to help determine whether the notice campaign was adequate.  
12 Therefore, Objector preserves this objection in anticipation of a low response rate to notification  
13 of the existence of this class, particularly among individual claimants and small business.  
14

15  
16 ADOPTION OF OTHER OBJECTIONS

17       The Objectors hereby adopt and incorporate herein all other objections lodged with  
18 the Court with regard to the proposed settlement, to the extent such objections are consistent with  
19 Williams’ previously raised objections.  
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1 CONCLUSION

2           The Court should not approve the settlement as proposed and should require that any  
3 final settlement remedy the shortcomings identified above.  
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5 DATED: March 4, 2016.

6   Respectfully submitted,

7   LAW OFFICES OF PAUL B. JUSTI

8   /s/ Paul B. Justi

9   Paul B. Justi

10    *Counsel for Objector Dan L. Williams & Co.*  
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